



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2019-0362; FRL-9998-32-Region 3]

**Approval and Promulgation of Air Quality Implementation Plans;
District of Columbia; Infrastructure Requirements for the 2015 Ozone National Ambient
Air Quality Standard**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision from the District of Columbia (the District). This SIP revision addresses certain infrastructure requirements to implement, maintain, and enforce the 2015 ozone national ambient air quality standards (NAAQS), including the requirements for interstate transport. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2019-0362 at <https://www.regulations.gov>, or via email to spielberger.susan@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or

other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Emlyn Vélez-Rosa, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2038. Ms. Vélez-Rosa can also be reached via electronic mail at velez-rosa.emlyn@epa.gov.

SUPPLEMENTARY INFORMATION: On August 24, 2018, the District Department of Environment and Energy (DOEE) submitted a revision to its SIP addressing infrastructure requirements for the 2015 ozone NAAQS.

I. Background

On October 26, 2015, EPA issued a final rule strengthening both the primary and secondary ozone NAAQS for ground-level ozone to 70 parts per billion (ppb), based on the fourth-highest maximum daily 8-hour ozone concentration per year (hereafter the 2015 ozone NAAQS). 80 FR 65292.

Whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. This particular type of SIP revision is commonly referred to as an “infrastructure SIP revision.” Infrastructure SIP revisions must meet the various requirements of CAA section 110(a)(2), as applicable. Section 110(a)(2) includes a list of specific elements that each infrastructure SIP revision must address. The infrastructure requirements of section 110(a)(2) are designed to ensure that the structural components of each state’s air quality management program are adequate to meet the state’s responsibilities under the CAA for implementation of a particular NAAQS.

Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP revisions.¹ EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions. Unless otherwise noted below, EPA is following that existing approach in acting on the District’s infrastructure SIP revision. In addition, in the context of acting on such infrastructure SIP revision, EPA evaluates the submitting state’s overall SIP for facial compliance with statutory and regulatory requirements, not for the state’s implementation of its SIP.² EPA has other authority to address any issues concerning a state’s implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

¹ EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013 guidance document titled “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)” (“the 2013 Infrastructure SIP Guidance”), as well as in numerous agency actions, including EPA’s prior action on the District’s infrastructure SIP revision to address the 2012 fine particulate matter (PM_{2.5}) NAAQS. See 81 FR 54504 (August 16, 2016). A copy of the 2013 Infrastructure Guidance can be found in the docket for this rulemaking action.

² See U.S. Court of Appeals for the Ninth Circuit decision in *Montana Environmental Information Center v. EPA*, No. 16-71933 (August 30, 2018).

II. Summary of SIP Revision and EPA Analysis

On August 24, 2018, DOEE submitted a formal SIP revision to EPA to satisfy the infrastructure requirements of CAA section 110(a)(2) for the 2015 ozone NAAQS. This SIP revision addresses the following infrastructure elements, or portions thereof, for the 2015 ozone NAAQS: CAA section 110(a)(2)(A), (B), (C), (D)(i)(I), D(i)(II), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M). The August 24, 2018 SIP revision addresses the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS (also known as good neighbor provisions). The SIP revision provides technical information supporting the conclusion that the emissions from the District do not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state.

The August 24, 2018 SIP revision did not address the portion of element (C) or element (I) referring to the nonattainment requirements of part D, title I of the CAA. part D, title I of the CAA addresses SIP requirements and submission deadlines for designated nonattainment areas for each NAAQS. Such nonattainment SIP revisions are required if an area is designated nonattainment and would be due to EPA by the dates statutorily prescribed in subparts 1 through 5 under part D, title I of the CAA. EPA believes that because the CAA directs states to submit these nonattainment SIP requirements on a separate schedule, it is not necessary for states to include neither element (I) nor the portion of element (C) referring to part D as part of the infrastructure SIP revisions due three years after adoption or revision of any NAAQS.³

Upon receipt, EPA evaluated the District's August 24, 2018 SIP revision submittal for technical and administrative completeness, in accordance with 40 CFR part 51, appendix V. EPA

³ See EPA's 2013 Infrastructure SIP Guidance.

determined that the submittal was technically incomplete with respect to the portions of the infrastructure elements in CAA section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J) relating to the Prevention of Significant Deterioration (PSD) permitting program under part C, title I of the CAA, because the District has not adequately addressed its part C requirement of having a SIP-approved PSD program. By contrast, EPA found the remainder of the August 24, 2018 SIP revision submittal to be administratively and technically complete in accordance with 40 CFR part 51, appendix V.

On February 27, 2019, EPA sent a letter to DOEE notifying the District of this completeness determination. As a result of this finding, EPA can only proceed in taking rulemaking action on the complete portions of the District's August 24, 2018 submittal, and cannot take rulemaking action on the PSD-related portions of CAA section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J) for the 2015 ozone NAAQS, until DOEE submits a SIP revision to address the PSD permit requirements of part C, title I of the CAA.

EPA recognizes, however, that the District is already subject to a Federal implementation plan (FIP) containing the Federal PSD program⁴, which EPA issued to correct the District's PSD SIP deficiency, and that DOEE does not have to take further action for the FIP-based permitting program to be implemented. Notably, EPA does not anticipate any adverse consequences to DOEE from the February 27, 2019 incompleteness finding for the PSD-related portions of the elements listed above for the District's 2015 ozone NAAQS submission. Mandatory sanctions would not apply to the District under CAA section 179, because the failure to submit a PSD SIP

⁴ EPA promulgated the PSD FIP in 1980, and later amended it in 2003. The PSD FIP for the District is incorporated by reference in the District's SIP in 40 CFR 52.499, and it contains the provisions of 40 CFR 52.21, with the exception of paragraph (a)(1). See 45 FR 52676, at 52741 (August 7, 1980), 68 FR 11316, at 11322 (March 10, 2003), and 68 FR 74483, at 74488 (December 24, 2003).

revision is neither with respect to a submission that is required under CAA title I part D, nor in response to a SIP call under CAA section 110(k)(5). In addition, EPA is not subject to any further FIP duties from this incompleteness finding, because there is already a PSD FIP for the District, which addresses the District's SIP deficiency. This rulemaking action is only addressing the complete portions of the District's August 24, 2018 infrastructure SIP revision submittal for the 2015 ozone NAAQS.

Based upon EPA's review of the District's August 24, 2018 SIP revision, EPA believes that the District has met its obligations under CAA section 110(a)(2)(A), (B), (C), (D)(i)(I), D(i)(II), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M), with exception of the PSD-related portions of section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J), for the reasons discussed earlier. Thus, EPA determines that the August 24, 2018 SIP revision adequately satisfies the District's applicable infrastructure requirements, or portions thereof, listed above for the 2015 ozone NAAQS. A detailed summary of EPA's review and rationale for taking rulemaking action on the District's infrastructure SIP revision may be found in the technical support document (TSD) for this proposed rulemaking action which is available online at www.regulations.gov, docket number EPA-R03-OAR-2019-0362.

III. Proposed Action

EPA is proposing to approve the District's August 24, 2018 SIP revision as meeting the requirements of section 110(a)(2) of the CAA to implement, maintain, and enforce the 2015 ozone NAAQS, including specifically section 110(a)(2)(A), (B), (C), (D)(i)(I), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) for this NAAQS, with exception of those portions addressing requirements related to the PSD permitting program of part C, title I of the CAA in

section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J), which EPA has deemed incomplete pursuant to 40 CFR part 51, appendix V. This proposed rulemaking action does not include action on section 110(a)(2)(I) or portions of section 110(a)(2)(C) referring to the permit program under part D, title I of the CAA. EPA is soliciting public comments on the issues discussed in this document which will be considered before taking final rulemaking action.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, pertaining to the District of Columbia's infrastructure requirements for the 2015 ozone NAAQS under CAA section 110(a)(2), does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: August 5, 2019.

Diana Esher,
Acting Regional Administrator,
Region III.

[FR Doc. 2019-17667 Filed: 8/15/2019 8:45 am; Publication Date: 8/16/2019]